Sykt Telekom Malaysia Bhd v Business Chinese Directory Sdn Bhd

SUPREME COURT (KUALA LUMPUR) — CIVIL APPEAL NO 02–373 OF 1993
HARUN HASHIM, PEH SWEE CHIN AND EUSOFF CHIN SCJJ
6 MAY 1994

Evidence *— Exhibit — Book not in the national language but in the Chinese language — Whether admissible as exhibit in court without translation — Rules of the High Court 1980 O 92 r 1*

Civil Procedure *— Trial — Admission of exhibits — Whether document in the Chinese language had to be translated to the national language before it could be admitted as exhibit — Rules of the High Court 1980 O 92 r 1*

Words and Phrases *— 'Telephone directory' — Telecommunications Amendment Act 1977 s 44*

The appellant alleged that the respondent had compiled, published, printed, distributed and sold telephone directories in the Chinese language entitled 'Malaysian Business Chinese Directory' ('the book'), and that the respondent in doing so, had obtained or copied substantially from telephone directories published by the appellant without first obtaining their permission or authority. The appellant sought and obtained an injunction pending trial, to restrain the respondent from printing the book and for damages to be assessed. The High Court dismissed the plaintiff's claim with costs. The appellant has appealed.

Held, dismissing the appeal:

(1) The book was in Chinese writing and it was the primary function and duty of the trial judge to look at the book, to satisfy himself what it was, and decide, if necessary, with the help of experts in the Chinese language and writing, whether the book was in fact a telephone directory as defined by the law. Here, it was impossible for the judge, by looking at the book, to come to any decision simply because he himself was unable to understand it.

(2) Order 92 r 1 of the Rules of the High Court 1980 is a mandatory provision which requires that any document not in the national language or in the English language be translated into the national language before it could be admitted as an exhibit. Therefore, in this case, the book could not be admitted as an exhibit and without it, the appellant's claim failed.

[Bahasa Malaysia summary

Perayu mengatakan bahawa responden telah menyusun, menerbit, mencetak, mengedar dan menjual panduan telefon dalam bahasa

Cina bertajuk 'Malaysian Business Chinese Directory' ('buku itu'), dan bahawa responden, dengan berbuat demikian, telah mengambil daripada atau meniru secara substansial panduan telefon yang telah diterbitkan oleh perayu tanpa mendapat kebenaran atau kuasa daripada mereka terlebih dahulu. Perayu telah memohon dan mendapat suatu injunksi sementara menunggu perbicaraan, untuk menghalang responden daripada mencetak buku itu dan untuk ganti rugi yang perlu ditaksirkan. Mahkamah Tinggi telah menolak tuntutan plaintif dengan kos. Perayu telah membuat rayuan.

Diputuskan, menolak rayuan itu:

(1) Buku itu berada di dalam tulisan Cina dan hakim perbicaraan mempunyai tugas dan fungsi utama untuk melihat buku itu, dan memuaskan hatinya sendiri mengenai apa sebenarnya buku itu, dan memutuskan dengan bantuan pakar bahasa dan tulisan Cina, jika perlu, sama ada buku itu sememangnya sebuah panduan telefon sebagaimana yang ditakrifkan oleh undang-undang. Di dalam kes ini, adalah mustahil bagi hakim, apabila melihat buku itu, untuk membuat sebarang keputusan kerana beliau tidak dapat memahami buku itu.

(2) Aturan 92 k 1 Kaedah-Kaedah Mahkamah Tinggi 1980 merupakan suatu peruntukan mandatori yang memerlukan supaya sebarang dokumen yang tidak berada di dalam bahasa kebangsaan atau bahasa Inggeris diterjemahkan terlebih dahulu kepada bahasa kebangsaan sebelum ia boleh diterima sebagai ekshibit. Oleh itu, di dalam kes ini, buku itu tidak boleh diterima sebagai suatu ekshibit dan tanpanya, tuntutan perayu gagal.]

Notes

For cases on exhibits, see 7 *Mallal's Digest* (4th Ed) paras 718–725; and [1991] Mallal's Digest 1102–1108.

Cases referred to

1 *Lee Guat Eng v Tan Lian Kim* [1985] 2 MLJ 196 (refd)

2 *Ratnam v Cumarasamy & Anor* [1964] 3 All ER 933; [1965] 1 WLR 8 (refd)

Legislation referred to

Rules of the High Court 1980 O 92 r 1

Appeal from: Suit No D3–22–1073 of 1991 (High Court, Kuala Lumpur)

CV Das (*M Nagarajah* and *Ken St James* with him) (*Shook Lin & Bok*) for the appellant.

Low Hop Bing (*Siak Leong Sing* with him) (*Low Hop Bing & Associates*) for the respondent.

Eusoff Chin SCJ (delivering the grounds of judgment of the court): we dismissed this appeal on 13 December 1993 and we now give the grounds for doing so.

The appellant alleged that the respondent had compiled, published, printed, distributed and sold telephone directories in the Chinese language entitled 'Malaysian Business Chinese Directory', and that the respondent in doing so had obtained or copied substantially from telephone directories published by the appellant without first obtaining the permission or authority of the appellant. The appellant sought an injunction from the court to restrain the respondent from printing the Chinese telephone directories and for damages to be assessed. On 21 September 1991, the court granted an interim injunction pending trial. The respondent's application to set aside the interim injunction was rejected by the court on 23 December 1991. On 25 June 1993, after a full trial, the High Court dismissed the plaintiff's claim with costs. The appellant appealed to the Supreme Court.

What we are mainly concerned with here is whether the book (exh P7), entitled 'Malaysian Business Chinese Directory' is in fact a telephone directory. Under s 44 of the Telecommunications Amendment Act 1977 a 'telephone directory' means 'the book containing the alphabetical list of telephone subscribers' names and addresses'. What is 'alphabetical list' is not defined in the Act. The learned judge of the High Court in his judgment has held that the 'Malaysian Business Chinese Directory' is not a telephone directory because it has not been proved to contain the names of telephone subscribers in alphabetical order. We agree with his finding on this point.

It was argued by learned counsel for the appellant that the impugned directory being in the Chinese language could not be arranged in alphabetical order because Chinese characters do not contain alphabets but depend on the number of strokes, and identification is by counting the number of strokes. He argued that the court should accept the impugned directory as an exhibit without its having to be translated from Chinese into our 'bahasa kebangsaan' since the appellant's Chinese language expert, Dr Tang Eng Teik in his evidence, stated that it was not possible to translate a Chinese name into romanized Malay writing. This is because when written in Chinese characters, the surname 'Tang' is pronounced as 'Chin' in Hakka, as 'Tan' in Hokkien, as 'Chan' in Cantonese and as 'Teng' in Fuchow.

Lee Sok Peng had, when giving evidence for the respondent, said that the 'Malaysian Business Chinese Directory' was written in Mandarin. It was, therefore, submitted by the learned counsel for the respondent that a translation into Bahasa Kebangsaan could have been made by following only the Mandarin pronunciation. From the appeal record, we note that he had also submitted in the High Court that the impugned directory should not have been admitted in evidence because it had not been translated into Bahasa Kebangsaan as required by O 92 r 1 of the Rules of the High Court 1980 ('the RHC') which states:

> Any document required for use in pursuance of these rules *shall be* in the national language, and may be accompanied by a translation thereof in the English language:

A Provided that any document in the English language may be used as an exhibit, with or without a translation thereof in the national language. (Emphasis added.)

The learned counsel for the respondent repeated before us his earlier submission in the High Court that the book 'Malaysian Business Chinese B Directory' should not have been admitted as an exhibit because it had not been translated into the national language. He stressed that O 92 r 1 of the RHC, uses the words 'shall be in the national language' and therefore it is a mandatory requirement.

In this case, the book, 'Malaysian Business Chinese Directory', is in Chinese writing. Witnesses told the court that it contains a list of businesses C and trade names together with their telephone numbers. The learned judge hearing the case cannot rely on the oral evidence of witnesses alone as to what the contents of the book are. It is the primary function and duty of the learned judge to look at the book, to satisfy himself as to what it is, and decide, if necessary, with the help of the experts in the Chinese language D and writing, whether the book is in fact a telephone directory as defined by the law. In this case, it is impossible for the learned judge, by looking at the book, to come to any decision simply because he himself is unable to understand what it is.

We find that O 92 r 1 of the RHC, is a mandatory provision which requires that any document which is not in the national language or in the E English language must be translated into the national language before it can be admitted as an exhibit. Further, it has been held by the courts that rules of court are to be obeyed. Failure to comply with them will lead to chaos in the conduct of litigation. See *Lee Guat Eng v Tan Lian Kim*,[1] and *Ratnam v Cumarasamy & Anor.*[2]

F It is regretted that the well-founded submission of learned counsel for the respondent went unheeded in the court below. Secondary, ie oral evidence of the witnesses about the contents of exh P7, a document (a book) in Chinese, should not have been considered by the court below as such evidence would become relevant normally only on the non-availability of exh P7 as when such non-availability is accounted for in same way. Here G the exh P7 was available and the appellant in fact submitted it in evidence without a certified translation of the same in the national language in contravention of O 92 r 1 of the RHC. The High Court should not have admitted it as an exhibit. Without this book, there is no evidence to substantiate the appellant's claim, and for this reason, the appellant's claim must, therefore, fail.

H We, therefore, dismissed the appeal with costs.

Appeal dismissed.

Reported by Prof Ahmad Ibrahim

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